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(b) *Contract aircraft.* The sale of aviation fuel, oil, supplies, etc. to aircraft under U.S. Government contract or charter is permitted at, and limited to, points where passengers or cargo are loaded into or discharged from the aircraft under terms of the contract or charter. Sales are not authorized at naval aviation facilities where commercial supplies and service are available.

## **PART 767—APPLICATION GUIDELINES FOR ARCHEOLOGICAL RESEARCH PERMITS ON SHIP AND AIRCRAFT WRECKS UNDER THE JURISDICTION OF THE DEPARTMENT OF THE NAVY**

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### **Subpart A—Regulations and Obligations**

#### **§ 767.1 Purpose.**

(a) The purpose of this part is to establish the requirement and procedural guidelines for permits to conduct research on and/or recover Department of the Navy (DON) ship and aircraft wrecks.

(b) The U.S. Naval Historical Center's (NHC) Office of Underwater Archeology is the DON command responsible for managing DON ship and aircraft wrecks under the guidelines of the Federal Archeological Program. In order for the NHC's management policy to be consistent with the Federal Archeology Program, and the goals of the NHPA, DON has implemented a permitting process applicable to DON property consistent with and applying the Archeological Resources Protection Act of 1979 as amended (ARPA), 16 U.S.C. 470aa-mm, permitting criteria. Department of the Navy policies regarding its ship and aircraft wrecks are consistent with ARPA permitting requirements. Department of the Navy application of ARPA permitting criteria promotes consistency among federal agencies and meets DON's responsibilities under the NHPA while allowing qualified non-federal and private individuals and entities access to DON historic ship and aircraft wrecks.

(c) To assist NHC in managing, protecting, and preserving DON ship and aircraft wrecks.

#### **§ 767.2 Definitions.**

*Aircraft wreck* means the physical remains of an aircraft, intact or otherwise, its cargo, and other contents. Aircraft wrecks are classified as either historic structures or archeological sites.

*Archeological site* means the location of an event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure. A ship or aircraft wreck, along with its debris field, is an archaeological site when it lacks the

structural integrity of an intact aircraft or vessel and when it and its location retain archeological or historical value regardless of the value of any existing remains.

*Artifact* means any object or assemblage of objects, regardless of age, whether in situ or not, that may carry archeological or historical information that yields or is likely to yield information to the scientific study of culture or human history.

*Cultural resource* means any pre-historic or historic district, site, building, structure, or object, including artifacts, records, and material remains related to such a property or resource. Historic aircraft wrecks or shipwrecks are classified as either archeological sites or historic structures.

*Gravesite* means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, where individual human remains are deposited.

*Historic structure* means a structure made up of interdependent and inter-related parts in a definite pattern or organization. Constructed by humans, it is often an engineering project large in scale. An aircraft wreck or shipwreck is a historic structure when it is relatively intact and when it and its location retain historical, architectural, or associative value.

*Permit holder* means any person authorized and given the exclusive right by the NHC to conduct any activity under these regulations.

*Permitted activity* means any activity that is authorized by the NHC under the regulations in this part.

*Research vessel* means any vessel employed for scientific purposes under the regulations in this part.

*Ship wreck* means the physical remains of a vessel, intact or otherwise, its cargo, and other contents. Shipwrecks are classified as either historic structures or archeological sites.

*Wrecksite* means the location of a ship or aircraft that has been sunk, crashed, ditched, damaged, or stranded. The wreck may be intact or scattered, may be on land or in water, and may be a structure or a site. The site includes the physical remains of the wreck and all other associated artifacts.

### § 767.3 Policy.

(a) The Naval Historical Center's policy has been to evaluate each DON ship and aircraft wreck on an individual basis. In some cases, the removal of DON ship and aircraft wrecks may be necessary or appropriate to protect the cultural resource and/or to fulfill other NHC goals, such as those encompassing research, education, public access, and appreciation. Recovery of DON ship and aircraft wrecks may be justified in specific cases where the existence of a cultural resource may be threatened. Therefore, recovery of some or all of a cultural resource may be permitted for identification and/or investigation to answer specific questions; or the recovery presents an opportunity for public research or education.

(b) Generally, DON ship and aircraft wrecks will be left in place unless artifact removal or site disturbance is justified and necessary to protect DON ship and aircraft wrecks, to conduct research, or provide public education and information that is otherwise inaccessible. While NHC prefers non-destructive, in situ research on DON ship and aircraft wrecks, it recognizes that site disturbance and/or artifact recovery is sometimes necessary. At such times, site disturbance and/or archeological recovery may be permitted, subject to conditions specified by NHC.

## Subpart B—Permit Guidelines

### § 767.4 Application for permit.

(a) To request a permit application form, please write to: Department of the Navy, U.S. Naval Historical Center, Office of the Underwater Archeologist, 805 Kidder Breese St. SE, Washington Navy Yard, DC 20374-5060. Telefax number: 202-433-2729.

(b) Applicants must submit three copies of their completed application at least 120 days in advance of the requested effective date to allow sufficient time for evaluation and processing. Requests should be sent to the Department of the Navy, U.S. Naval Historical Center, Office of the Underwater Archeologist, 805 Kidder Breese St. SE, Washington Navy Yard, DC 20374-5060.

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(c) If the applicant believes that compliance with one or more of the factors, criteria, or procedures in the guidelines contained in this part is not practicable, the applicant should set forth why and explain how the purposes of NHC are better served without compliance with the specified requirements. Permits are valid for one year from the issue date.

### § 767.5 Evaluation of permit application.

(a) Permit applications for archeological research are reviewed for completeness, compliance with program policies, and adherence to the guidelines of this subpart. Incomplete applications will be returned to the applicant for clarification. Complete applications are reviewed by NHC personnel and, when necessary, outside experts. In addition to the criteria set forth in § 767.6, applications are also judged on the basis of: relevance or importance; archeological merits; appropriateness and environmental consequences of technical approach; and qualifications of the applicants.

(b) Under certain circumstances, it may be necessary to consult with the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) about the need to comply with section 106 of the NHPA. A section 106 review may require the NHC to consult with the appropriate SHPO and the ACHP. The ACHP review can take up to 60 days beyond the NHC's required 120-day review. Therefore, the entire review process may take up to 180 days.

(c) The NHC shall send applications for research at sites located in units of the national park system, national wildlife refuge system, and national marine sanctuary system to the appropriate Federal land manager for review. The Federal land manager is responsible for ensuring that the proposed work is consistent with any management plan or established policy, objectives or requirements applicable to the management of the public lands concerned. NHC shall send applications for research at sites located on state bottomlands to the appropriate state agency for review. The burden of obtaining any and all additional permits

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or authorizations, such as from a state or foreign government or agency, private individual or organization, or from another federal agency, is on the applicant.

(d) Based on the findings of the NHC evaluation, the NHC Underwater Archeologist will recommend an appropriate action to the NHC Director. If approved, NHC will issue the permit; if denied, applicants are notified of the reason for denial and may appeal within 30 days of receipt of the denial. Appeals must be submitted in writing to: Director of Naval History, Naval Historical Center, 805 Kidder Breese St. SE, Washington Navy Yard, DC 20374-5060.

### § 767.6 Credentials of principal investigator.

A resume or curriculum vitae detailing the professional qualifications and professional publications and papers of the principal investigator (PI) must be submitted with the permit application. The PI must have: a graduate degree in archeology, anthropology, maritime history, or a closely related field; at least one year of professional experience or equivalent specialized training in archeological research, administration or management; at least four months of supervised field and analytic experience in general North American historic archaeology and maritime history; the demonstrated ability to carry research to completion; and at least one year of full-time professional experience at a supervisory level in the study of historic marine archeological resources. This person shall be able to demonstrate ability in comprehensive analysis and interpretation through authorship of reports and monographs.

### § 767.7 Conditions of permits.

(a) Upon receipt of a permit, permit holders must counter-sign the permit and return copies to the NHC and the applicable SHPO, Federal or State land manager, or foreign government official prior to conducting permitted activities on the site. Copies of counter-signed permits should also be provided to the applicable federal land manager when the sunken vessel or aircraft is located within a unit of the national

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park system, the national wildlife refuge system, or the national marine sanctuary system.

(b) Permits must be carried aboard research vessels and made available upon request for inspection to regional preservation personnel or law enforcement officials. Permits are non-transferable. Permit holders must abide by all provisions set forth in the permit as well as applicable state or Federal regulations. Permit holders should abide by applicable regulations of a foreign government when the sunken vessel or aircraft is located in foreign waters. To the extent reasonably possible, the environment must be returned to the condition that existed before the activity occurred.

(c) Upon completion of permitted activities, the permit holder is required to submit to NHC a working and diving log listing days spent in field research, activities pursued, and working area positions.

(d) The permit holder must prepare and submit a final report as detailed in § 767.9, summarizing the results of the permitted activity.

(e) The permit holder must agree to protect all sensitive information regarding the location and character of the wreck site that could potentially expose it to non-professional recovery techniques, looters, or treasure hunters. Sensitive information includes specific location data such as latitude and longitude, and information about a wreck's cargo, the existence of armaments, or the knowledge of gravesites.

(f) All recovered DON cultural resources remain the property of the United States. These resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution and must meet the standards set forth in 36 CFR part 79, Curation of Federally Owned and Administered Archaeological Collections, at the expense of the applicant. The repository shall be specified in the permit application.

### **§ 767.8 Requests for amendments or extensions of active permits.**

(a) Requests for amendments to active permits (e.g., a change in study design or other form of amendment) must

conform to the regulations in this part. All necessary information to make an objective evaluation of the amendment should be included as well as reference to the original application.

(b) Permit holders desiring to continue research activities must reapply for an extension of their current permit before it expires. A pending extension or amendment request does not guarantee extension or amendment of the original permit. Therefore, you must submit an extension request to NHC at least 30 days prior to the original permit's expiration date. Reference to the original application may be given in lieu of a new application, provided the scope of work does not change significantly. Applicants may apply for one-year extensions subject to annual review.

(c) Permit holders may appeal denied requests for amendments or extensions to the appeal authority listed in § 767.5.

### **§ 767.9 Content of permit holder's final report.**

The permit holder's final report shall include the following:

(a) A site history and a contextual history relating the site to the general history of the region;

(b) A master site map;

(c) Feature map(s) of the location of any recovered artifacts in relation to their position within the wrecksite;

(d) Photographs of significant site features and significant artifacts both in situ and after removal;

(e) If applicable, a description of the conserved artifacts, laboratory conservation records, and before and after photographs of the artifacts at the conservation laboratory;

(f) A written report describing the site's historical background, environment, archeological field work, results, and analysis;

(g) A summary of the survey and/or excavation process; and

(h) An evaluation of the completed permitted activity that includes an assessment of the permit holder's success of his/her specified goals.

### **§ 767.10 Monitoring of performance.**

Permitted activities will be monitored to ensure compliance with the conditions of the permit. NHC on-site

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personnel, or other designated authorities, may periodically assess work in progress by visiting the study location and observing any activity allowed by the permit or by reviewing any required reports. The discovery of any potential irregularities in performance under the permit will be promptly reported and appropriate action will be taken. Permitted activities will be evaluated and the findings will be used to evaluate future applications.

### § 767.11 Violations of permit conditions.

The Director of Naval History, the Underwater Archeologist for DON, or his/her designee may, amend, suspend, or revoke a permit in whole or in part, temporarily or indefinitely, if in his/her view the permit holder has acted in violation of the terms of the permit or of other applicable regulations, or for other good cause shown. Any such action will be communicated in writing to the permit holder and will set forth the reason for the action taken. The permit holder may appeal the action to the appeal authority listed in § 767.5.

### § 767.12 References for submission of permit application to conduct archeological research.

(a) National Historic Preservation Act of 1966, as amended (NHPA), 16 U.S.C. 470 *et seq.* (1999), and Protection of Historic Properties, 36 CFR part 800. These regulations govern the Section 106 Review Process established by the NHPA.

(b) Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation published on September 29, 1983 (48 FR 44716). These guidelines establish standards for the preservation planning process with guidelines on implementation.

(c) Archeological Resources Protection Act of 1979, as amended (ARPA), 16 U.S.C. 470aa-mm, and the Uniform Regulations, 43 CFR part 7, subpart A. These regulations establish basic government-wide standards for the issuance of permits for archeological research, including the authorized excavation and/or removal of archeological resources on public lands or Indian lands.

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(d) Secretary of the Interior's regulations, Curation of Federally-Owned and Administered Archeological Collections, 36 CFR part 79. These regulations establish standards for the curation and display of federally-owned artifact collections.

(e) Antiquities Act of 1906, Public Law 59-209, 34 Stat. 225 (codified at 16 U.S.C. 431 *et seq.* (1999)).

(f) Executive Order 11593, 36 FR 8291, 3 CFR, 1971-1975 Comp., p. 559 (Protection and Enhancement of the Cultural Environment).

(g) Department of Defense Instruction 4140.21M (DoDI 4120.21M, August 1998). Subject: Defense Disposal Manual.

(h) Secretary of the Navy Instruction 4000.35 (SECNAVINST 4000.35, 17 August 1992). Subject: Department of the Navy Cultural Resources Program.

(i) Naval Historical Center Instruction 5510.4. (NAVHISTCENINST 5510.4, 14 December 1995). Subject: Disclosure of Information from the Naval Shipwreck Database.

## PARTS 768-769 [RESERVED]

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